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In re Application of
Fieback KLAUS et al.
U.S. Serial No.: 09/674,431
PCT No.: PCT/EP99/01809
Int. Filing Date: 18 March 1999
Priority Date: 29 April 1998
Attorney's Docket No.: 22899N2PCT/US
For: MICROWAVE-ACTIVATABLE LATENT
HEAT STORAGE BODY

: DECISION ON
: PETITION UNDER
: 37 CFR 1.10(d)

This decision is in response to applicants Renewed Petition Under 37 CFR 1.10(d), filed 25 January 2002, and applicants' request for a refund filed 29 March 2001.

BACKGROUND

On 18 November 1999, applicants filed international application PCT/EP99/01809 that claimed priority of earlier German applications, the earliest having a priority date of 29 April 1998. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 04 November 1999. A Demand for international preliminary examination, in which the United States was elected, was filed on 12 November 1999 prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 29 October 2000.

In October 2000, applicants filed a letter for entry into the national stage in the United States which was accompanied by an Information Disclosure Statement and the basic national fee of \$860.00.

On 29 March 2001, applicants filed a request for refund of claim fees that were charged to his deposit account in error. This request will be dealt with in the current decision.

On 05 July 2001, applicants filed a petition under 37 CFR 1.10(d) to accord a national phase filing date of 27 October 2000. The petition indicated that the correspondence was deposited on 27 October 2000 as evidenced by the included hand-written receipt. Applicants indicated that the postal clerk who received the Express Mail envelope wrote the receipt and refused to give the applicant a copy of the actual "Express Mail" receipt.

On 02 November 2001, applicants' petition was dismissed because the petition did not include corroborating evidence from the USPS or sufficient evidence that came into being after deposit or within one day of the deposit as stipulated under §513 of the MPEP.

On 25 January 2002, applicants filed the current renewed petition indicating that the postal clerk was willing to sign a declaration indicating that she wrote the receipt when her supervisor intervened and told her not to sign the document.

DISCUSSION

With respect to applicants' request for refund, a review of the application indicates that applicant was charged twice for excess claim fees. Therefore, applicants' deposit account will be credited in an amount of \$1130.

With respect to applicants' renewed petition under 37 CFR 1.10(d), applicant still has not provided corroborating evidence from the USPS or sufficient evidence that came into being after deposit or within one day of the deposit as stipulated under §513 of the MPEP.

Besides Mr. Farber's assertion, there is no clear indication that the handwritten note was written by a US postal clerk or that it is a USPS official notation. Further no evidence has been provided from the USPS employee that would confirm that the correspondence in question was accorded an incorrect "Date-In."

With respect to applicants' request to waive the rules, no petition fee was paid. Further, any such request must be accompanied by a showing of an extraordinary circumstance wherein justice would require such a waiver.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.10(d) to correct the National Phase Filing and the request for waiver of the Rules are **DISMISSED** without prejudice.

Applicants' request for a refund is **GRANTED**. Counsel's Deposit Account #060105 has been credited in the amount of \$1130.

If reconsideration on the merits of this petition is desired, a proper response must be filed promptly.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C., 20231, with the contents of this letter marked to the attention of the PCT Legal Office.

This application is being returned to the DO/EO/US for further processing in accordance with this decision including forwarding of the application to the appropriate Tech Center for examination in due course.



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